



**The Comptroller General
of the United States**

Washington, D.C. 20548

Ayer

Decision

Matter of: Tan-Tex Industries

File: B-235435

Date: September 1, 1989

DIGEST

1. Agency--a wholly-owned government corporation engaged in sales to other government agencies--properly limited competition for required raw materials to six of nine potential sources where agency properly conducted procurement under Federal Acquisition Regulation § 6.302 (unusual and compelling urgency provision) because (1) the raw material order had to be quickly placed to obtain both a source of supply able to meet production and delivery deadlines and a price low enough to avoid a loss on agency's contract with another government agency; (2) an incorrect telephone number on the agency's source list thwarted the agency's attempt to seek a quotation from the protester; and (3) there is no evidence of a deliberate attempt by the agency to exclude the protester from the competition.

2. Agency--a wholly-owned government corporation funded by proceeds from sales to other government agencies--properly ordered its entire production-run requirement for raw material under a limited competition procurement where agency obtained competitive prices from six offerors, and immediate purchase of the entire requirement was necessary to secure source of supply and current prices, in order to ensure that agency would meet its delivery deadlines and avoid a loss on a contract to sell the resulting production to another agency.

DECISION

Tan-Tex Industries protests the award of a contract to EnPro Corporation by Federal Prison Industries, Inc. (UNICOR), for

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raw material used in the fabrication of mailbags.^{1/} UNICOR conducted the procurement under the limited competition provision of Federal Acquisition Regulation (FAR) § 6.302 (unusual and compelling urgency) in order to secure quickly a source of supply at the current market price so that it could both meet the delivery dates and avoid a loss on a \$6 million mailbag contract with the U.S. Postal Service. Tan-Tex contends that the agency improperly invoked FAR § 6.302, that Tan-Tex was improperly denied an opportunity to compete for the requirement, and that the agency should have ordered less than its entire raw material requirement under the circumstances of limited competition.

We deny the protest.

The Postal Service solicitation under which UNICOR was competing called for delivery of finished mailbags beginning in August 1989. UNICOR understood from conversations with the Postal Service and potential suppliers that it had to act quickly--placing an order before April 28, 1989, the anticipated award date for the Postal Service contract--to ensure availability of the raw material. UNICOR had learned that The Osterneck Company of North Carolina, in anticipation of the Postal Service award, had already reserved much of the limited loom time available at the few mills able to work the yarn. Moreover, UNICOR heard that the Postal Service was about to award another contract requiring the same raw material which would further increase the demand at the few mills able to supply the raw material. Believing that it would have to act before the Postal Service began awarding contracts in order to obtain (1) a source of supply able to meet production and delivery deadlines, and (2) a price low enough to avoid a loss on the contract, UNICOR prepared a statement of urgency and a justification for other than full and open competition which was approved on April 26.

UNICOR had previously solicited verbal price and delivery quotations for the raw material from a list of nine known

^{1/} Federal Prison Industries, Inc., is a wholly-owned government corporation operating under the tradename UNICOR. UNICOR's inmate laborers use the material (Codura nylon duck cloth) to make mailbags. Codura yarn is manufactured by E.I. DuPont; however, only a few mills (weavers) are able to weave the yarn into the cloth which must then be finished by "converters" such as Tan-Tex and EnPro. UNICOR purchases the material under contract from converters, and manufactures it into mailbags.

suppliers in the course of pricing its bid for the Postal Service contract. On April 27, UNICOR again used the list to solicit limited competition. UNICOR telephoned the suppliers, telling those it reached that they had through the next day to submit offers. Six of the nine suppliers responded with prices. UNICOR did not reach the protester because, although the protester's name appeared on the list, its telephone number was incorrect. On April 28, UNICOR awarded a \$2,821,340 contract to EnPro. In May, the U.S. Postal Service awarded two mailbag contracts, one to UNICOR, and one to Osterneck.

Tan-Tex first contends that UNICOR's use of other than full and open competition procedures was improper because the loom shortage on which the urgency was based did not exist.

Generally, procurements must be conducted using competitive procedures. See 41 U.S.C. § 253(a)(1)(A) (Supp. IV 1986). However, an agency may use other than competitive procedures where the agency's needs are of such an unusual and compelling urgency that the government would be seriously injured if the agency did not limit the number of sources from which bids or proposals are solicited. 41 U.S.C. § 253(c)(2); FAR § 6.302-2(a)(2). We will object to the agency's determination to limit competition based on unusual and compelling urgency only when the agency's decision lacks a reasonable basis. Colbar, Inc., B-230754, June 13, 1988, 88-1 CPD ¶ 562. Here, we find that the record supports UNICOR's determination that an urgent situation existed which justified its decision to limit competition.

Tan-Tex argues that the agency determination is based on incorrect information. In support of its argument, Tan-Tex has provided letters from three mills capable of producing the raw material. One mill claims that it had the capacity to produce the raw material at the time UNICOR was soliciting sources and that it continues to have the required capacity. The second mill states that it has the capacity to weave the required yardage within normal textile leadtimes from receipt of an order. The third mill states that it had the capacity as of April 28, to produce the required yardage.

UNICOR reports that the three mills named by the protester were not on its source list and therefore were not contacted by UNICOR. UNICOR reports that it acted on the basis of the market information provided by its suppliers, and that its suppliers had advised UNICOR that only one mill had dedicated sufficient capacity to meet the requirement, that all other mills were operating on a "subject to prior sales" basis, and that quick action was required to secure both

production commitments and price protection since the price of the yarn was increasing.

UNICOR is a wholly-owned government corporation which carries out its mission to employ inmate laborers in part by entering into contracts to manufacture items for sale to other government agencies. Its operations are sustained solely by the revenues produced by its operations. Consequently, both production commitments and price protection are important to the agency's continuing operation. In this case, UNICOR's ability to perform the \$6 million Postal Service contract depended upon its promptly obtaining a source of supply at a price low enough to provide a return over cost. Since UNICOR operates in a commercial sphere, we think that it can reasonably apply a business perspective to its determination of whether a particular procurement presents an urgent and compelling situation. The need to quickly secure both a source for a raw material which may soon be subject to a demand in excess of supply, and a reasonable price in a rising market to meet commitments under a \$6 million contract are, in our view, urgent and compelling considerations in this context. Accordingly, in our view, UNICOR properly used the limited competition exception of FAR § 6.302 under the circumstances of this procurement. See Washington Printing Supplies Inc., 66 Comp. Gen. 647 (1987), 87-2 CPD ¶ 234.

Tan-Tex also argues that, to the extent an urgency existed, it was due to a lack of advance planning by UNICOR or the Postal Service. Under FAR § 6.301(c), the use of other than full and open competition may not be justified based on a lack of advance planning by the requiring activity. Tan-Tex argues that UNICOR should have planned for a potential loom shortage before it submitted an offer under the Postal Service solicitation, or attempted to negotiate a later delivery date for the mailbags with the Postal Service.

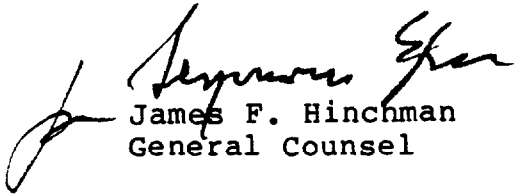
The record shows that UNICOR acted promptly to secure a source of supply once it became aware of the Postal Service procurement. Similarly, we fail to see how the requirement for advance planning required that UNICOR attempt to persuade the Postal Service to change the delivery schedule it had determined was necessary to meet its needs. Finally, to the extent Tan-Tex alleges that there was a lack of advance planning by the Postal Service, the Postal Service's actions clearly are not at issue in the protest and have no bearing on the propriety of UNICOR's actions with regard to advance planning. Accordingly, we see no basis to conclude that the urgency on which the limited competition was based was due to a lack of advance planning.

Tan-Tex also contends that it was improperly denied an opportunity to compete for the requirement because the agency failed to investigate why it was unable to reach Tan-Tex, a listed source of supply. We disagree. When using other than competitive procedures based on unusual and compelling urgency, the agency is required to request offers from as many potential sources as is practicable under the circumstances. 41 U.S.C. § 253(e); FAR § 6.302-2(c)(2). Here, UNICOR tried to contact Tan-Tex; however, an incorrect telephone number on the agency's source list thwarted the agency's attempt to seek a quotation from the protester. There is no evidence of a deliberate attempt by the agency to exclude the protester from the competition and none is alleged. Once UNICOR properly determined that competition would have to be limited, the contracting officer was vested with considerable discretion to determine the best method suited to satisfy its urgent needs. See Engineering Research, Inc., B-180893, Sept. 12, 1974, 74-2 CPD ¶ 161. The record shows that on Friday, April 28, after receiving six bids and believing that an award had to be made that same day, the contracting officer determined that she had obtained as much competition as she could in the time she had and awarded the contract. Under the circumstances, we see no reason to question the contracting officer's decision to curtail solicitation after receiving six bids and proceed with award.

Finally, Tan-Tex contends that because the competition was limited UNICOR should have limited the amount purchased to a quantity sufficient to meet UNICOR's needs until UNICOR could conduct an open competition for the balance of the requirement. We disagree. The availability of the raw material was diminishing and not expected to increase, the market price was increasing and was not expected to drop, and there was no indication that the six firms solicited had not offered their best competitive prices. Under the circumstances, any delay in contracting for the required materials could only create a substantial risk that UNICOR would be unable to meet its commitments under the Postal Service contract either because sufficient material was not

available or because the rising market made it impossible for UNICOR to perform without incurring a significant loss. Consequently, we find UNICOR's decision to award the entire requirement reasonable.

The protest is denied.



James F. Hinchman
General Counsel